

**L.H., Appellant**

**U.S. POSTAL SERVICE, POST OFFICE,  
Washington, DC, Employer**

*Case Submitted on the Record*

CHRISTOPHER J. GODFREY, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On October 16, 2017 appellant, then a 45-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a right knee condition causally related to factors of her federal employment. She noted that she first became aware of the condition on September 12, 2017, but did not realize the connection to her federal employment until October 10, 2017. Appellant stopped work on September 21, 2017. OWCP accepted the claim for right knee meniscal derangement due to an old tear and authorized right knee arthroscopic surgery, which occurred on March 16, 2018. It paid wage-loss compensation on the supplemental rolls for temporary total disability beginning November 17, 2017, and on the periodic rolls effective April 1, 2018.

In a letter dated April 20, 2018, OWCP advised appellant that she had been placed on the periodic rolls, outlined her entitlement to compensation benefits, and advised her of her responsibility to return to work in connection with the accepted injury. In an attached EN1049 form, it provided:

“OVERPAYMENTS: To minimize the possibility of an overpayment of compensation, NOTIFY THIS OFFICE IMMEDIATELY WHEN YOU GO BACK TO WORK. If you receive your compensation payments *via* paper check, the payment shows the period for which payment is made. If you have worked for any portion of this period, return the payment to this office, even if you have already advised OWCP that you are working. For payments sent by electronic funds transfer (EFT), a notification of the date and amount of payment appears on the statement from your financial institution. You are expected to monitor your EFT deposits carefully, at least every two weeks. If you have worked for any portion of the period for which a deposit was made, advise OWCP immediately so that the overpayment can be collected.” (Emphasis in the original.)

In a letter dated January 25, 2019, appellant noted that she had gone back to work on January 17, 2019, in a light-duty assignment which accommodated her doctor’s restrictions.

A Form CA-3 worksheet dated February 12, 2019, signed by an employing establishment injury compensation specialist, indicated that on January 25, 2019 appellant accepted a January 21, 2019 limited-duty job offer working full time with restrictions.

On February 13, 2019 OWCP noted on a fiscal form that appellant had returned to work on January 25, 2019, but that on February 2, 2019 it had paid her compensation for the period January 25 through February 2, 2019. It calculated that appellant had been overpaid in the amount of \$1,008.68 for the nine days she received compensation following her return to work on January 25, 2019.

In an e-mail dated June 11, 2019, OWCP requested that the employing establishment clarify the date appellant returned to work. It noted that the employing establishment’s Form CA-3 worksheet indicated that she accepted the job offer on January 25, 2019, but she submitted correspondence indicating that she returned to work on January 17, 2019.

In a responsive e-mail dated July 2, 2019, the employing establishment responded to OWCP noting that appellant worked 3.5 hours on January 16, 2019, which was overtime as it was her day off. Appellant worked a full day on January 17, 2019, therefore her back to work date was January 17, 2019. She was presented a job offer on January 21, 2019, which she signed on January 25, 2019.

In a July 31, 2019 preliminary overpayment determination, OWCP advised appellant that she had been overpaid \$1,792.81 for the period January 16 through February 2, 2019 because she returned to a limited-duty job on January 16, 2019, but continued to receive compensation for temporary total disability through February 2, 2019. It explained that during the period January 6 through February 2, 2019 she had been paid a net total of \$2,788.81, which divided by 28 days, equaled a daily rate of \$99.60. Since appellant was not entitled to compensation for 18 days from January 16 to February 2, 2019, the daily rate of \$99.60 multiplied by 18 totaled the overpayment amount of \$1,792.81. OWCP also determined that she was at fault in the creation of the overpayment because she had accepted payment that she knew or reasonably should have known to be incorrect. It informed appellant that she had the right to submit evidence or argument if she disagreed with its findings. OWCP also informed her that she had a right to a precoupment hearing before an OWCP hearing representative. Additionally, it instructed appellant to complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. There was no response from appellant.

By decision dated September 30, 2019, OWCP finalized its preliminary determination that appellant received an overpayment of compensation in the amount of \$1,792.81 for the period January 16 through February 2, 2019. It determined that she was at fault in the creation of the overpayment<sup>2</sup>, and therefore, was not entitled to waiver of recovery of the overpayment. OWCP required recovery in full within 30 days.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup> Section 8116(a) of FECA provides that, while an employee is receiving compensation or if he or she has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, the employee may not receive salary, pay, or remuneration of any type from the United States, except in limited specified instances.<sup>4</sup> OWCP's procedures provide that an overpayment of

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<sup>2</sup> It is unclear from the case record whether appellant's compensation payments were made by electronic funds transfer.

<sup>3</sup> *Id.* at § 8102(a).

<sup>4</sup> *Id.* at § 8116(a).

compensation is created when a claimant returns to work, but continues to receive wage-loss compensation.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for the period January 16 through February 2, 2019.

The evidence of record establishes that appellant returned to limited-duty work working overtime for the employing establishment for 3.5 hours on January 16, 2019 as that was a nonscheduled workday, and full-time work as of January 17, 2019, but she continued to receive wage-loss compensation through February 2, 2019. As noted above, a claimant is not entitled to receive compensation for total disability during a period in which she had actual earnings. Therefore, an overpayment of compensation was created in this case.<sup>6</sup>

The Board further finds, however, that this case is not in posture for decision with regard to the amount of overpayment. In the July 31, 2019 preliminary notice, OWCP determined the overpayment to be \$1,792.81 for the period January 16 through February 2, 2019, based upon a finding that appellant had worked 18 full days from January 16 through February 2, 2019, and that she was therefore overpaid at the rate of \$99.60 for each of these days. However, appellant has indicated that she returned to full-time work on January 17, 2019 and the employing establishment has indicated that she worked 3.5 hours on January 16, 2019 and full-time work as of January 17, 2019.

OWCP did not adequately explain the amount of the overpayment in this case as the Board is unable to determine the proper overpayment for January 16, 2019 as appellant had worked only 3.5 hours that day. A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.<sup>7</sup> The Board therefore finds that OWCP has not established the amount of the overpayment in question.

The case will be remanded to OWCP for recalculation of the amount of the overpayment, to be followed by a new preliminary notice of overpayment and a *de novo* overpayment decision.

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<sup>5</sup> See *E.R.*, Docket No. 19-1365 (issued December 23, 2019); *J.L.*, Docket No. 18-1266 (issued February 15, 2019); *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *B.H.*, Docket No. 09-0292 (issued September 1, 2009); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.1(a) (September 2018).

<sup>6</sup> *Id.*

<sup>7</sup> See *M.M.*, Docket No. 17-0560 (issued August 23, 2017); *R.H.*, Docket No. 08-2025 (issued July 20, 2009); see also *O.R.*, 59 ECAB 432 (2008).

### **CONCLUSION**

The Board finds that OWCP properly determined that an overpayment of compensation was created. The Board further finds, however, that the case is not in posture for decision regarding the amount of the overpayment.<sup>8</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 4, 2020  
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>8</sup> In light of the Board's findings regarding the amount of overpayment, it is premature to address the issue of fault in the creation of the overpayment of compensation.